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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,421	01/31/2002	Tetsuo Shibuya	YOR920010126US2	6845
21254 7590 08/21/2008 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817			EXAMINER LY, CHEYNE D	
			ART UNIT 2168	PAPER NUMBER
			MAIL DATE 08/21/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/059,421

Applicant(s)

SHIBUYA ET AL.

Examiner

CHEYNE D. LY

Art Unit

2168

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 101 rejection directed to claim 53.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Cheyne D Ly/
Examiner, Art Unit 2168

Continuation of 11. does NOT place the application in condition for allowance because: On pages 4-6, Applicant argues Floratos in view of Ishikawa does not describe the new limitation of processor which determines whether the open reading frame includes a putative gene based on a number of the patterns of amino acids located in the amino acid translation of the ORF, and/or weighted values associated with the patterns of amino acids located in the amino acid translation of the ORF. Applicant's argument is not persuasive because the argued limitation has been rendered obvious over the cited prior art in the previous Office Action. For example, Floratos in view of Ishikawa describes Determines whether said open reading frame includes a putative gene based on a number of said patterns of amino acids located in said amino acid translation of said ORF (page 167, column 2, section 4.1, e.g. setting the values of the parameters L, W, and Kmin, and page 168, column 1, Searching section, e.g. analyze a not yet characterized ORF from the genome, every pattern matching YZ28_METJA was scrutinized individually...allows the user to select any of the patterns matched by the query sequence, there exist three patterns which are specific to the kinase family, and all the proteins that match at least one of these three patterns are annotated as putative kinases), and/or weighted values associated with said pattern of amino acids located in said amino acid translation of said ORF (page 166, column 1, Chaining and Scoring section, e.g. score of a path within this graph is the sum of the weights of all the vertices and edges of the path, and page 167, e.g. consider together all the patterns of a particular backbone structure...the value of threshold).

On page 6, Applicant argues "Since Floratos's query sequence is a known protein, Floratos would have not use for an amino acid translation of an ORF." Applicant's argument is not persuasive because Floratos the searching methodology is used to analyze a not yet characterized ORF...from the genome" of organism. Therefore, Applicant's allegation that Floratos's query sequence is a known protein, Floratos would have not use for an amino acid translation of an ORF does not have reasonably support.

Applicant argues "Floratos does not teach or suggest anything about an open reading frame (ORF) or an "amino acid translation" of an ORF. Applicant's argument is not persuasive because Floratos the searching methodology is used to analyze a not yet characterized ORF...from the genome" of organism.

Further, the motivation to combine references to render the claimed invention obvious has been reasonably established in the previous Office Action. 13. Ishikawa describes FramePlot is a new implementation of the Frame analysis, with many improvements helps in finding a new gene (putative gene) (page 251, column 2, lines 3-4). While, Floratos describes there were no computational tools powerful enough to handle the task of pattern discovery in data sets of the size of existing protein data bases (page 164, column 2, last paragraph). Therefore, one of ordinary skill in the art at the time of the invention would have been motivated by FramePlot to use FramePlot with the pattern database of Floratos to greatly enhance current sequence analysis efforts to handle the task of pattern discovery in data sets of the size of existing protein databases. Therefore, it would have been obvious to one of ordinary skill in the art to make and use FramePlot of Ishikawa with the pattern database of Floratos to greatly enhance current sequence analysis efforts to handle the task of pattern discovery in data sets of the size of existing protein databases. Therefore, a prima facie case of obviousness has been clearly established as required under 35 USC 103(a).